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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,691	03/08/2004	Marc Bellotti	44378/293531 (13131-0331)	6082
23370	7590	10/27/2006	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			MONDESI, ROBERT B	
			ART UNIT	PAPER NUMBER
			1652	

DATE MAILED: 10/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,691

Applicant(s)

BELLOTTI ET AL.

Examiner

Robert B. Mondesi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 76,77 and 81-128 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 76-77 and 81-128 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office action is in response to the amendment filed September 28, 2006. **Claims 76-77 and 81-128** are presently pending and under examination.

Withdrawal of Objections and Rejections

The objections and rejections not explicitly restated below are withdrawn.

Maintenance of rejections

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 76-77 remain rejected and **claims 81-128** are rejected under 35 U.S.C. 102(e) as being anticipated by Zhu et al., United States Patent Application No. 2004/0106556 in light of applicants own submissions. The rejection of **claims 81-128** is appropriate because in accordance with applicants own submission on the record on page 2, lines 2-5, of the response filed September 28, 2006, the claims are merely rewrites of previously canceled claims and do not provide any new limitations or subject matter. New **claims 81-102** are dependent claims with limitations that were previously discussed in Office action mailed March 31, 2006. **Claims 102-128** are all product by process claims drawn to a particle derivative of HDL comprising apolipoprotein A-1 and at least one of apolipoprotein C-III, apolipoprotein D or apolipoprotein E that has been delipidated.

Double Patenting

Claims 76-77 remain provisionally rejected and **claims 81-122** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 73- 78, 80 and 85-90** of copending Application No. 10996570.

The rejection of **claims 81-128** is appropriate because in accordance with applicants own submission on the record on page 2, lines 2-5, of the response filed September 28, 2006, the claims are merely rewrites of previously canceled claims and do not provide any new limitations or subject matter. New **claims 81-102** are dependent claims with limitations that were previously discussed in Office action mailed March 31, 2006. **Claims 102-128** are all product by process claims drawn to a particle derivative of HDL comprising apolipoprotein A-1 and at least one of apolipoprotein C-III, apolipoprotein D or apolipoprotein E that has been delipidated.

The above rejections were explained in the previous Office action.

Response to applicants' arguments

In regards to the rejection of claims **76-77** under 35 U.S.C. 102(e) as being anticipated by Zhu et al., applicants assert that, none of the passages in Zhu discussed in the rejection are present in the provisional application No. 60/405,922, filed August 26, 2002 to which Zhu claims priority.

Applicants' arguments have not been found persuasive because the presently claimed invention a particle derivative of high density lipoprotein particles comprising apolipoprotein A-1 and at least one of apolipoprotein C-III,

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apolipoprotein D or apolipoprotein E does not have support in provisional application 60/484690 in accordance with the guidelines of written description under 35 U.S.C first paragraph. In fact there is not even a single mention of a particle derivative of HDL comprising apolipoprotein A-1, apolipoprotein C-III, apolipoprotein D or apolipoprotein E that has been delipidated; therefore the presently claimed invention is not granted the claim of benefit of provisional application 60/484690, and as a consequence of above the effective filing date of the presently claimed composition is March 8, 2004.

Applicants' argument with regards to the disclosure of provisional application 60/405,922 is now considered moot. The filing date of Zhu et al., United States Patent Application No. 2004/0106556 is August 26, 2003, hence, making the said patent application publication eligible for the rejection of the claims under 35 U.S.C. 102(e).

In regards to the rejection of **claims 81-122** are on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 73- 78, 80 and 85-90** of copending Application No. 10996570, applicants have asserted when allowable subject matter is found, applicants will address the rejection by filing a terminal disclaimer.

Conclusion

No claims are allowed

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

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Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

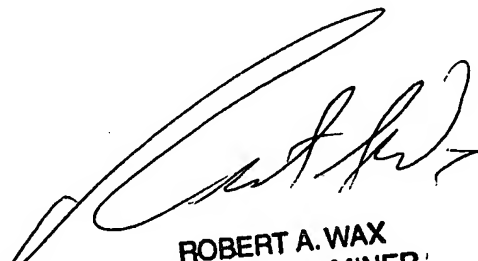
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert B. Mondesi
Patent Examiner
Group 1653

Robert B. Mondesi
10-25-06


ROBERT A. WAX
PRIMARY EXAMINER